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Re Mohd Mustaqim bin Muradi

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HIGH COURT (KUALA LUMPUR) — PETITION FOR ADMISSION AS ADVOCATE AND SOLICITOR NO WA-18–1101–08 OF 2022
AHMAD KAMAL J
21 DECEMBER 2023

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Legal Profession — Admission — Objection — Sarawak lawyer applied to be admitted as advocate and solicitor of High Court of Malaya without undergoing pupillage period prescribed under Legal Profession Act 1976 ('the LPA') — Whether pupillage period lawyer had undergone in Sarawak before he was admitted to the Bar there could not automatically exempt him from undergoing requisite pupillage under LPA because LPA did not apply to Sabah and Sarawak but only to Peninsular Malaysia — Whether petitioner had to comply with provisions of LPA if he wanted to be admitted to High Court of Malaya — Whether petitioner had to formally apply to Bar Council under s 13(3) of LPA if he wanted exemption on his pupillage period — Whether Bar Council had sole discretion to allow shortening of pupillage period for any period up to six months if special circumstances warranted it

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The petitioner herein, who resided in Miri, Sarawak, was admitted as an advocate and solicitor of the High Court of Sabah and Sarawak on 30 September 2022 after completing a year's pupillage under a practising lawyer in Miri from 2 August 2021 until 2 August 2022. On 3 August 2022, the petitioner applied to be admitted as an advocate and solicitor of the High Court of Malaya under s 15 of the Legal Profession Act 1976 ('the LPA') and subsequently filed all relevant documents for the petition to be heard even before he had completed the nine months of pupillage he was required to serve under s 12(2) of the LPA. The Attorney General ('AG'), the Bar Council and the Kuala Lumpur Bar Committee ('KLBC') objected to the petitioner's admission on the ground that he had not undergone the requisite period of pupillage under the LPA.

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Held, allowing the preliminary objections of the AG, the Bar Council and the KLBC to the petition:

(1) It was clear from the provisions of the LPA that in order for the petitioner to be admitted as an advocate and solicitor of the High Court of Malaya, he had to serve a pupillage period of nine months unless he was exempted from doing so under s 13 of the LPA (see para 34).

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(2) Since the petitioner filed his petition on 3 August 2022, pursuant to s 36(4) of the LPA, his pupillage period would commence from that date

and unless he was given an exemption, the pupillage period pursuant to s 12(2) of the LPA would be from 3 August 2022 until 2 May 2023. When the petitioner filed the Form 6 on 30 January 2023, he had not completed serving the pupillage period. He had also not been granted any exemption that shortened his period of pupillage (see paras 39–40).

(3) The petitioner could not use the pupillage period he had undergone in Sarawak under the Sarawak Advocates Ordinance to apply to be admitted as an advocate and solicitor under the LPA because the LPA only applied to Peninsular Malaysia and not to Sabah and Sarawak where the requirements for admissions to the Bar in those States were governed by their own respective Ordinances whose provisions differed from those in the LPA. In order to be admitted to the High Court of Malaya, the petitioner had to comply with the LPA which required his pupillage period to commence on 3 August 2022 and end on 2 May 2023 unless that period had been shortened by grant of an exemption by the Bar Council under s 13(3) of the LPA. As the petitioner never underwent any period of pupillage in Peninsular Malaysia, there was material non-compliance with the LPA (see paras 53 & 42–45).

(4) The fact that the petitioner was an advocate and solicitor of the High Court of Sabah and Sarawak or that he had undergone 12 months' pupillage in Sarawak did not automatically exempt him from having to undergo the nine-month pupillage period under the LPA. Section 13(3) of the LPA clearly required an application for exemption to be made and it was within the Bar Council's sole discretion to grant an exemption of any period up to six months' pupillage if special circumstances warranted it (see paras 60 & 62).

[Bahasa Malaysia summary

Pempetisyen di sini, yang menetap di Miri, Sarawak, telah diterima masuk sebagai peguambela dan peguamcara Mahkamah Tinggi Sabah dan Sarawak pada 30 September 2022 selepas menamatkan tempoh latihan selama setahun di bawah peguam yang beramal di Miri dari 2 Ogos 2021 hingga 2 Ogos 2022. Pada 3 Ogos 2022, pempetisyen memohon untuk diterima masuk sebagai peguambela dan peguamcara Mahkamah Tinggi Malaya di bawah s 15 Akta Profesion Undang-Undang 1976 ('APU') dan seterusnya memfailkan semua dokumen yang berkaitan untuk petisyen itu didengar meskipun sebelum dia menamatkan tempoh latihan sembilan bulan yang dia kehendaki berkhidmat di bawah s 12(2) APU. Peguam Negara ('PN'), Majlis Peguam dan Jawatankuasa Peguam Kuala Lumpur ('MPKL') membantah daftarai pempetisyen atas alasan dia tidak menjalani tempoh wajib latihan di bawah APU.

Diputuskan, membenarkan bantahan awal PN, Majlis Peguam dan MPKL terhadap petisyen itu:

(1) Ia adalah jelas daripada peruntukan APU bahawa untuk membolehkan pempetisyen diterima sebagai peguambela dan peguamcara Mahkamah Tinggi Malaya, dia perlu menjalani tempoh latihan selama sembilan bulan melainkan dia dikecualikan daripada berbuat demikian di bawah s 13 APU (lihat perenggan 34).

(2) Memandangkan pempetisyen memfailkan petisyennya pada 3 Ogos 2022, menurut s 36(4) APU, tempoh latihannya akan bermula dari tarikh tersebut dan melainkan dia diberi pengecualian, tempoh latihan mengikut s 12(2) APU akan bermula dari 3 Ogos 2022 hingga 2 Mei 2023. Apabila pempetisyen memfailkan Borang 6 pada 30 Januari 2023, dia belum menamatkan tempoh latihan. Dia juga tidak diberikan sebarang pengecualian untuk memendekkan tempoh latihannya (lihat perenggan 39–40).

(3) Pempetisyen tidak boleh menggunakan tempoh latihan yang dilaluinya di Sarawak di bawah Ordinan Peguambela Sarawak untuk memohon diterima masuk sebagai peguambela dan peguamcara di bawah APU kerana APU hanya terpakai untuk Semenanjung Malaysia dan bukan untuk Sabah dan Sarawak di mana keperluan untuk didaftarai ke Badan Peguam di Negeri tersebut ditadbir oleh Ordinan masing-masing yang peruntukannya berbeza daripada yang terdapat dalam APU. Untuk diterima masuk ke Mahkamah Tinggi Malaya, pempetisyen perlu mematuhi APU yang memerlukan tempoh latihannya bermula pada 3 Ogos 2022 dan berakhir pada 2 Mei 2023 melainkan tempoh itu telah dipendekkan melalui pemberian pengecualian oleh Majlis Peguam di bawah s 13(3) APU. Memandangkan pempetisyen tidak pernah menjalani sebarang tempoh latihan di Semenanjung Malaysia, terdapat ketidakpatuhan material terhadap APU (lihat perenggan 53 & 42–45).

(4) Fakta bahawa pempetisyen adalah peguambela dan peguamcara Mahkamah Tinggi Sabah dan Sarawak atau bahawa dia telah menjalani latihan selama 12 bulan di Sarawak tidak secara automatik mengecualikan dia daripada perlu menjalani tempoh latihan sembilan bulan di bawah APU. Seksyen 13(3) APU dengan jelas menghendaki permohonan untuk pengecualian dibuat dan ia adalah dalam budi bicara Majlis Peguam untuk memberikan pengecualian mana-mana tempoh latihan sehingga enam bulan jika keadaan istimewa memerlukannya (lihat perenggan 60 & 62).]

Cases referred to

Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii [2009] 4 MLJ 165; [2009] 1 MLRA 602; [2009] 4 CLJ 449, FC (refd)

Edmonds v Lawson and others [2000] IRLR 18 (refd)

Majlis Peguam v Sunil Singh Gill [2004] 4 MLJ 1; [2002] 2 MLRA 477; [2004] 3 CLJ 16, CA (distd)

Malaysian Bar v Mutang Tagal [1985] 1 MLJ 231; [1984] 1 MLRA 607, FC (refd)

Samantha Murthi v Attorney-General Malaysia & Or [1982] 2 MLJ 126; [1982] 1 MLRA 91; [1982] CLJ Rep 213, FC (distd)

Legislation referred to

Advocates and Solicitors Ordinance 1947 (repealed by Legal Profession Act 1976)

Advocates Ordinance 1958 (Chapter 110) ss 4, 5

Legal Profession Act 1976 ss 1, 2, 3, 10, 11, 11(1)(d), 12, 12(2) 13, 13(1), (2), (3), (4), 14, 14(2), 15, 15(5), 35, 36, 36(4)

The petitioner appeared in person.

Nik Mohd Noor bin Nik Kar (Senior Federal Counsel, Attorney General's Chambers) for the honourable Attorney General.

Farez Mohd Ali Jinnah (Farez Jinnah) for the Bar Council.

Weera Premananda (Ahmad Deniel, Ruben & Co) for the Kuala Lumpur Bar Committee.

Ahmad Kamal J:

INTRODUCTION AND BACKGROUND FACTS

[1] The petitioner is a Malaysian citizen residing in Miri, Sarawak. He graduated from the Multimedia University, Malaysia with LLB Honours. He read in chambers of one Mr Firdaus bin Morshidi in Miri from 2 August 2021 to 2 August 2022 and was subsequently admitted to the Sarawak Bar on 30 September 2022.

[2] On 3 August 2022, the petitioner filed 'an application to be admitted as an advocate and solicitor of the High Court of Malaya at the Kuala Lumpur High Court (encl 1) under s 15 of the Legal Profession Act 1976 ('the LPA').

[3] Under s 12 of the LPA, the petitioner is required to undergo a pupillage as a pupil in chambers for nine months from 3 August 2022 to 2 May 2023 ('pupillage period') unless exempted for such period under s 13 of the LPA.

[4] However, before such pupillage period was completed the petitioner filed his Forms 6, 7 and 8 on 30 January 2023 and did not complete the requisite pupillage under the LPA.

[5] The petition was jointly objected to by the honourable Attorney General ('AG'), the Bar Council and the Kuala Lumpur Bar Committee ('KLBC') on the ground that as of 30 January 2023 the petitioner has failed to serve the

prescribed period of pupillage under the LPA.

[6] After the hearing, I allowed the preliminary objections raised by the Honourable AG, the Bar Council and the KLBC with liberty to apply and my full grounds now follow.

CONTENTION OF PARTIES

Qualifications for admission

[7] Section 11 of the LPA provides that a qualified person may be admitted as an advocate and solicitor in the High Court of Malaya if he satisfies, among others, two conditions. Firstly, if he 'has satisfactorily served in Malaysia the prescribed period of pupillage for qualified person'. Section 12(2) of the LPA further provides that the prescribed period of pupillage shall be nine months.

[8] Another condition is, that the petitioner must serve his period of pupillage with an advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupillage. This is provided under s 13(1) of the LPA.

[9] As to this, the petitioner has maintained that he has satisfied the conditions since he had served 12 months of pupillage from 2 August 2021 to 2 August 2022 under his master, Mr Firdaus bin Morshidi, an advocate and solicitor who is in active practice in Sarawak. The petitioner also submitted that his master was admitted as an advocate and solicitor of the High Court of Malaya on 30 November 2001.

[10] The petitioner submitted that he had served the prescribed pupillage period under a master who is in active practice in Malaysia. To support his argument, he referred to *Samantha Murthi v Attorney-General Malaysia & Or* [1982] 2 MLJ 126; [1982] 1 MLRA 91; [1982] CLJ Rep 213 and *Majlis Peguam v Sunil Singh Gill* [2004] 4 MLJ 1; [2002] 2 MLRA 477; [2004] 3 CLJ 16.

MATERIAL CONTRADICTION IN FORMS 1, 6 AND THE CERTIFICATE OF DILIGENCE

[11] The KLBC via encl 32 on p 8, submitted that there were material contradictions in the petitioner's caused papers which caused this petition to be defective and fatal. KLBC pointed out that the phrase 'sekarang ini' in para 5 of Form 1 which was filed on 3 August 2023 implied that he currently undergoing his chambering, which he did not.

[12] The KLBC further submitted that by virtue of ss 12(2) and 36(4) of the LPA, the petitioner's period of pupillage will be for nine months starting from the date of filing of Form 1 on 3 August 2022. KLBC by referring to para 6 of Form 6 and para 2 of the certificate of diligence submitted that the date of commencement of pupillage in both of these documents was from 2 August 2021 to 2 August 2022, which materially contradicted Form 1. KLBC claimed that the petitioner at all material times did not file any affidavit to amend such a mistake.

[13] The petitioner also submitted that the details in Form 6 and Form 8 (encl 6) of his petition are accurate. He explained that para 6 of Form 6 which sets out the details that he had chambered at Mr Firdaus bin Morshidi from 2 August 2021 to 2 August 2022 is accurate. He further explained that he had communicated his intention to use his 12-months period of pupillage in Sarawak for the purpose of this petition since it was first filed to the Bar Council. Hence, he submitted that there is no mala fide on the part of him to deceive any parties.

[14] The petitioner also stated that the details as to his master in Form 8 are also accurate since his master was admitted as an advocate and solicitor of the High Court of Malaya in line with the interpretation under s 3 of the LPA supported with exhs 26 and 29 of the notice of objection.

THE PERIOD OF PUPILLAGE CANNOT BE SERVED REMOTELY

[15] The KLBC submitted that at all material times, the petitioner had allegedly undergone his pupillage at Messrs Firdaus & Company which is located outside Peninsular Malaysia. By virtue of s 2 of the LPA, Sabah and Sarawak are not included in the definition of Malaysia under the LPA. Hence, the act of the petitioner allegedly undergoing his pupillage remotely in Sarawak was an indicator that he had never commenced any pupillage under the LPA.

CLERICAL ERROR

[16] The KLBC argued that such mistakes made by the petitioner are not merely clerical errors but substantial defects that must be corrected. The Bar Council made the same objection and contended that the errors committed by the petitioner went towards the substantive aspects of s 36(4) of the LPA, in which it had affected the petitioner's date of commencement of the pupillage.

REQUIREMENT UNDER S 36(4) OF THE LPA

[17] The petitioner submitted that the period of pupillage under s 36(4) of the LPA is only applicable for the application for short call under s 36(2) of the

LPA and not for long call, as long call is governed under ss 12(2) and 13(1) of the LPA.

[18] The petitioner further submitted that this matter was supported in the case of *Samantha Murthi* when the Federal Court had allowed the admission of the petitioner despite the petition being filed after the end of the 12-months pupillage period in Sarawak. Hence, he claimed that s 36(4) of the LPA has no applicability in this petition.

[19] The Bar Council in his submissions-in-reply had stated s 36 of the LPA does not merely address a pupil master's application for a pupil to have limited rights of the audience but also covers matters such as persons defined as an 'unauthorised person'. The Bar Council further submitted, the start of the pupillage that would lead to the option of pupil master making an application under s 36(2) of the LPA.

CONFIDENTIAL REPORT UNDER S 14(2) OF THE LPA

[20] The petitioner also contended that the courses conducted by the Bar Council are not a necessary condition under the LPA to be admitted as an advocate and solicitor as the power to admit any person as an advocate and solicitor is a discretion of the court in line with s 10 of the LPA.

[21] The petitioner, in reply to the parties' argument which tried to read the requirement to attend the courses together with s 14 of the LPA, had stated that s 14 did not mention any requirement to attend the courses, but only provides in regard to inquiries as to the petitioner's character. The petitioner stands that such inquiries were fulfilled when he submitted two names of the referees for the purpose of the ethics report.

[22] It was stated that the duty to fulfill the requirement under s 14 of the LPA in conducting inquiries is under the Bar Council and KLBC. He also submitted that the case of *Malaysian Bar v Mutang Tagal* [1985] 1 MLJ 231; [1984] 1 MLRA 607 had affirmed the position in *Samantha Murthi* for the purpose of being admitted as an advocate and solicitor of High Court Malaya.

[23] The KLBC in his submissions-in-reply (encl 32) on p 11 had submitted that it is impossible to produce a confidential report under s 14(2) of the LPA due to the failure of the petitioner in giving cooperation to them. KLBC explained that s 14(2) of the LPA had vested the KLBC to conduct an inquiry as to the character of any petitioner to be admitted as an advocate and solicitor of High Court Malaya and to produce a confidential report as to the result of inquiries.

[24] However, the petitioner at all material times had failed to attend the introductory session and face-to-face session organized by the Bar Council as well as to fill the particulars of the petitioner form and referee form. This had caused the inability on the part of the KLBC to assess the character of the petitioner in ensuring that he is compatible to be admitted as an advocate and solicitor and to get confirmation as to his good standing from the referees.

[25] The honourable AG took the same stand and opposed to the petitioner's application. The reasons given by the honourable AG are similar to those given by others.

ISSUES

[26] Thus, the issue in this case is whether the petitioner who had served 12 months of pupillage in Miri Sarawak under his master, Mr Firdaus bin Morshidi can use the period of pupillage to be admitted to as an advocate and solicitor of the High Court of Malaya.

THE DECISION OF THE COURT

[27] The provisions in relation to the admission of advocates and solicitors are provided under ss 10 to 15 of the LPA. Section 10 of the LPA provides for the admission of advocates and solicitors. This Section reads as follows:

> 10 Admission of advocates and solicitors
>
> The High Court may at its discretion and subject to this Act admit as an advocate and solicitor of the High Court —
>
> (a) any qualified person; and
>
> (b) any articled clerk who has complied with Section 25:
>
> Provided that no person who is a qualified person by reason of his having passed the final examination for the degree or other qualification which makes him a qualified person under paragraph (a), (b) or (c) of the definition of 'qualified person' in section 3 shall be admitted as an advocate and solicitor before the degree or other qualification has been conferred upon him.

[28] Further, s 11 of the LPA provides for the qualification of admission to the Bar under the LPA. This provision is as follows:

> 11 Qualifications for admission
>
> (1) Subject to section 14, a qualified person may be admitted as an advocate and solicitor if he —
>
> (a) has attained the age of eighteen years;
>
> (b) is of good character; and

(i) has not been convicted in Malaysia or elsewhere of a criminal offence as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty;

(ii) has not been adjudicated bankrupt and has not been found guilty of any of the acts or omissions mentioned in paragraph 33(6)(a), (b), (c), (e), (f), (h), (k) or (I) of the Bankruptcy Act 1967 [Act 360];

(iii) has not done any other act which, if being a barrister or solicitor in England, would render him liable to be disbarred, disqualified or suspended from practice; or

(iv) has not been, or is not liable to be, disbarred, disqualified or suspended in his capacity as a legal practitioner in any other country;

(c) is either a Federal citizen or a permanent resident of Malaysia;

(d) *has satisfactorily served in Malaysia the prescribed period of pupillage for qualified persons.*

(2) As from the 1 January 1984, no qualified person shall be admitted as an advocate and solicitor unless, in addition to satisfying the requirements of subsection (1), he has passed or is exempted from the Bahasa Malaysia Qualifying Examination. (Emphasis added.)

[29] The prescribed period of pupillage is provided under s 12 of the LPA which is stated as follows:

12 Period of pupillage of qualified person

(1) For the purposes of this Part, a qualified person shall during his period of pupillage be known as a 'pupil', and a person with whom a pupil serves his period of pupillage or any part thereof shall be known as a 'master'.

(2) A qualified person shall, before he is admitted as an advocate and solicitor, serve a period of pupillage and, *subject to this section and section 13, the prescribed period of pupillage shall be nine months.*

(3) No qualified person shall, without the special leave in writing of the Bar Council, hold any office or engage in any employment of any kind, whether full-time or otherwise, during his period of pupillage, but nothing in this subsection shall preclude a pupil from receiving remuneration from his master. (Emphasis added.)

[30] Section 13 of the LPA provides for exemption from period and qualification for pupillage. Subsections (1) and (2) of s 13 listed provisions pertaining to the master, as follows:

13 Exemption from period and qualification for pupillage

(1) Subject to subsection (4) a pupil shall serve his period of pupillage with an

advocate and solicitor who is and has been in active practice in Malaysia for a total period of not less than seven years immediately preceding the date of commencement of his pupillage:

Provided that the Bar Council may on special grounds allow a pupil to serve his period of pupillage with an advocate and solicitor of less than seven years' standing.

(2) The Bar Council may allow a qualified person to serve different parts of his period of pupillage with different masters.

[31] Subsection (3) of s 13 of the LPA provides where a petitioner could be exempted from period and qualification for pupillage. The Bar Council may, in its sole discretion, exempt a qualified person from any period up to six months' pupillage upon application made to it supported by satisfactory evidence. Section 13(3) and (4) of the LPA provides that:

13 Exemption from period and qualification for pupillage

...

(3) *The Bar Council may, in its sole discretion, exempt a qualified person from any period up to six months' pupillage upon application made to it supported by satisfactory evidence* that —

(a) there are special circumstances justifying a shortening of the period of pupillage; or

(b) the applicant has for a period of not less than six months been a pupil or read in the chambers of a legal practitioner in active private practice, in the Commonwealth, of more than seven years' standing; or

(c) the applicant is an articled clerk in Malaysia: or

(d) the applicant has been engaged in active practice as a legal practitioner by whatever name called in any part of the Commonwealth for a period of not less than six months.

(4) A qualified person who has served in the Judicial and Legal Service for at least one year shall be exempted from serving any period of pupillage provided his application for admission as an advocate and solicitor is supported by a certificate from the Attorney General to the effect that he is a fit and proper person to be admitted as an advocate and solicitor. (Emphasis added.)

[32] Section 14 of the LPA further stipulates the provision for filling of admission petitions and enquiries as follows:

14 Filing of admission petition and enquiries, etc

(1) Upon any petition for admission and enrolment as an advocate and solicitor being filed, the Bar Council shall make or cause to be made full inquiries into the character of the petitioner and upon such petition being set down for hearing, to forward to the Chief Justice a confidential report of the result of such inquiries.

(2) All the State Bar Committees (if more than one) in the States in which a person applying to be admitted pursuant to section 15 has served his pupillage, shall upon the person's petition being set down for hearing make or cause to be made full inquiries into the character of the petitioner and the confidential report of the result of the inquiries shall be forwarded to the Chief Justice with such comments upon it as the Bar Council may consider necessary.

(3) If any of the reports referred to in subsection (1) or subsection (2) is unfavourable to the petitioner the Chief Justice may, if he thinks fit, direct such report to be filed in Court and a copy thereof to be served on the petitioner and, subject to such directions as the Court may give, such report shall be taken into consideration on the hearing of the petition.

(4) All reports and communications under this section shall be absolutely privileged.

[33] Section 15 of the LPA deals with a petition for admission with affidavit. The provision is as follows:

15 Petition for admission with affidavit

(1) This section shall apply to every person who proposes to apply to be admitted and enrolled as an advocate and solicitor.

(2) An application for admission under this section shall be by a petition to the Court and verified by affidavit.

(3) Every petitioner shall, not less than fourteen days before his petition is to be heard or such shorter period as the Court may allow, file an affidavit exhibiting —

(a) where applicable, true copies of any documentary evidence showing that he is a qualified person;

(b) two recent certificates as to his good character;

(c) a certificate of diligence from his master with whom he served his pupillage in cases where he is required to serve a period of pupillage, or in the absence of such certificate any other evidence as the Court may require showing that he has served such pupillage with diligence;

(d) where applicable, a certificate signed by the Secretary of the Board that the petitioner has attended the courses of instruction and passed the examinations, if any, required in his case under this Act;

(e) where applicable, a certificate from his principal that he has satisfactorily served the appropriate period as an articled clerk;

(f) true copies of any documentary evidence showing that he is either a Federal citizen or a permanent resident of Malaysia; and

(g) true copies of any documentary evidence that he has passed or is

exempted from the Bahasa Malaysia Qualifying Examination.

(4) The petition, notice, affidavit and certificates referred to in this section shall be in the forms prescribed by the Board.

(5) The petitioner shall file his petition at the Registrar's Office at the Central Registry accompanied by notices intimating that he has so petitioned; such notices shall be posted and continue to be posted at all the High Courts for three months before the petitioner is admitted and enrolled as an advocate and solicitor.

[34] Based on the provisions, it is clear that in order to be admitted as an advocate and solicitor of the High Court of Malaya, a qualified person must serve a pupillage period of nine months, unless exemption is granted. Therefore, the petitioner in this case will have to serve a period of nine months of pupillage unless he is exempted from doing so under s 13 of the LPA.

PURPOSE OF PUPILLAGE

[35] The Malaysian Bar through its Practical Guide to Pupillage and Admission as an Advocates and Solicitor in Malaysia states that the objective of the pupillage is to allow the pupil to gain some acquaintance with the work of an advocate and solicitor before commencing practice.

[36] This is because law graduates only acquired basic knowledge of substantive and adjectival law while a competent advocate and solicitor has a practical working knowledge of those parts of the law particularly in searching for information in order to answer questions posed by the clients. The substantial part of an advocate and solicitor also involves the drafting and advocacy skills which requires the full and exact knowledge of the law.

[37] Though the pupillage period is insufficient to cover all the skills, however, this period can allow a pupil to acquire some experience of the law in action, the relationship between the advocate and solicitor and his client as well as the relationship with other advocates and solicitors.

[38] The purpose of pupillage can also be seen in the case of *Edmonds v Lawson and others* [2000] IRLR 18, High Court, Queen's Bench Division (Edmonds) where it was held that:

> The purpose of pupillage is training. It is for a fixed term, the pupil master is required to teach his pupil, and successful completion of pupillage entitles the pupil to a full practising certificate.

[39] In this case, the petitioner filed his petition on 3 August 2022. Unless an exemption is given, the period of his pupillage will be from 3 August 2022 to

2 May 2023. It is to be noted that s 36(4) of the LPA provides that the period of pupillage shall commence on the date of the filling of the petition referred to in s 15(5) of the LPA, ie in this case 3 August 2022.

[40] It appears that as of the filling date of Form 6 on 30 January 2023, the petitioner has not completed the pupillage period of nine months as prescribed by s 12(2) of the LPA. No exemption had also been granted to him to shorten his pupillage period.

[41] The petitioner's submission that the fact that he had served a period of one year of pupillage in Miri from 2 August 2021 to 2 August 2022 complies with the requirements of the LPA cannot stand. This is because, firstly the period of pupillage must be the current pupillage period, unless exemption is given. In this case, the pupillage period is set to commence from 3 August 2022 to 2 May 2023. Therefore, he can only be admitted as an advocate and solicitor of the High Court of Malaya after nine months of pupillage unless an exemption is given.

[42] Secondly, the petitioner's admission to the Sarawak Bar is subject to ss 4 and 5 of the Sarawak Ordinance. The requirements of the Sarawak Ordinance vary from s 13 of the LPA.

[43] I am of the view that the period of pupillage served by the petitioner in Sarawak under the purview of a firm in Sarawak and Sarawak Advocates Ordinance 1958 (Chapter 110) is not applicable under the LPA by virtue of s 2 of the LPA. The period of pupillage under the LPA only commences from the date of the filing of the petition (Form 1) as provided by s 36(4) of the LPA.

[44] The petitioner had never undergone any period of pupillage in Peninsular Malaysia, and under any firm and master in Peninsular Malaysia. Therefore, this court views the failure of the petitioner to fulfill the other requirements as a material non-compliance.

[45] It is to be noted that s 2 of the LPA has brought a few implications, where the provisions under the LPA do not apply to Sabah and Sarawak or in any part of it. Section 2 of the LPA provides that all provisions, sections and/or any proceedings under the LPA shall apply to the whole Malaysia except its application to Sabah and Sarawak. Up until this day, no modification has been made by the Yang di-Pertuan Agong; and the order (if any in Sarawak) is not published in *gazetted* as required under s 2 of the LPA.

[46] To ascertain the applicability of this LPA as stated in s 2, it is pertinent to look into the intention of the drafter through the Hansard during the tabling of this bill. This LPA came into force on 1 June 1977 via (PU(B) 327/1977)

after it had received royal assent on 6 March 1976 and *gazetted* on 11 March 1976.

[47] This LPA has repealed the previous Advocates and Solicitors Ordinance 1947 which governed the legal profession in Peninsular Malaysia. The then Advocates and Solicitors Ordinance 1947 was enacted based on the Advocates and Solicitors Enactment of 1940 of the Federated Malay States. The 1947 Ordinance also consolidated the earlier different enactments for the Federated Malay States, the Straits Settlements and Johore.

[48] The bill has been tabled on 18 December 1975. From the Hansard, the drafter of the bill had mentioned as follows in regard to its applicability on p 9634.

> Though this Bill, in principle, is applicable throughout Malaysia, in practice it could only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make.

(See: Hansard (Malaysia, Perbahasan Dewan Rakyat, Bacaan Kali Kedua dan Ketiga, Rang Undang-Undang Profesion Undang-Undang, 18 December 1975, p 9634).)

[49] However, prior to the tabling of this bill on 18 December 1975, this bill was debated during the tabling of the Rang Undang-Undang Peguambela (Pindaan) on 17 July 1975. The question was posed by the Dr Tan Chee Khoon as follows:

> Dr Tan Chee Khoon: Ya, saya hendak memberi contoh sahaja sebab the doctors have one registration. Now I want to bring to the attention of the Minister why should the lawyers have three registrations — one in Peninsular Malaysia, one in Sabah and one in Sarawak — which means the lawyers in Sarawak cannot practise in Sabah and vice versa, the lawyers in Semenanjung Malaysia cannot practise in Sabah and vice versa, or cannot practise in Sarawak and vice versa. Now, I hope the Honourable Minister of Law and Attorney-General can bring forth a Bill whereby all the lawyers are registered under one registration, which means they can then practise anywhere in Malaysia — if we are to have a Malaysia where everybody has equal rights. Now they do not have equal rights. Why should the lawyers be singled out for such discrimination, for example? Ada beberapa orang peguam yang hendak menjalankan pekerjaan membuka syarikat di Kota Kinabalu umpamanya, mereka tidak dibenarkan. Begitu juga, ada peguam dari Semenanjung Malaysia yang hendak membuka syarikat di Kuching atau Sibu tetapi tidak dibenarkan. Atau ada satu kes di sana yang mana orang di sana berkehendakkan seorang peguam dari sini, peguam di sini tidak boleh pergi ke sana untuk mewakili orang di sana. Now this is where if we have one registration for all with the same rules — and we can change the rules a little to suit the conditions in Sabah and Sarawak — then I do not see any insurmountable problems. After all, although I know very little of law, the registration of a legal practitioner is not much different from that of a medical

practitioner. In effect, I think the registration of a medical practitioner poses far more problems because the medical practitioners, as of now, are trained in places as far as the United States of America, Canada and many parts of India, whereas the lawyers are not scattered so far abroad. They are either from the Inns of Courts in London or from New Zealand, Australia and now Singapore. I submit that in any registration, it is the qualification that matters. The scrutiny of the qualifications of lawyers does not pose as many problems as that of medical practitioners and I do hope that the Minister of Law will study this problem and see that all the lawyers in Malaysia, and that includes Sabah and Sarawak, can be brought under one registration. The other defect that I see in this piecemeal amendment is this, Mr Speaker, Sir. It talks of the University of Singapore. Now the Minister of Law knows that by next year, the first batch of lawyers will come out from the Faculty of Law, University of Malaya. We now recognise the LL.B. of the University of Singapore, but what of the LL.B. of our own university? This is where if we have one registration, it would not pose any problem. So 1 hope that the Minister of Law will bring an amendment to the registration of lawyers to include lawyers from all parts of Malaysia and if that is not possible within the forseeable future, then he must take into consideration that the L.L.B. students from the University of Malaya will graduate next year and in about a year's time after that, they will be called to the Bar here and if they choose to go to Sabah or Sarawak, why should we deny them the chance of practising in those parts?'

(See: Hansard (Malaysia, Perbahasan Dewan Rakyat, Bacaan Kali Kedua dan Ketiga, Rang Undang-Undang Peguambela (Pindaan) 17 July 1975, pp 5678–5680).)

[50] In reply to this question, the then Minister of Law and Attorney General, Tan Sri Abdul Kadir bin Yusof, on pp 5686–5688 stated as follows:

Tan Sri Abdul Kadir bin Yusof: Tuan Yang di-Pertua, saya suka menerangkan di sini iaitu semua tahu bahawa saya telah kemukakan Rang Undang-Undang itu pada bacaan kali yang pertama iaitu kita ada a new Advocates and Solicitors Ordinance Bill yang tebal, sudah dibacakan pada kali yang pertama di Dewan ini dan akan dibawa dan dibentangkan serta dibahas dalam mesyuarat yang akan datang. Semua Ahli Yang Berhormat tahu. Saya harap empat lima minggu lagi dapat diedarkan kepada Ahli-ahli Yang Berhormat di mana terkandung di dalamnya Bil itu ialah kerjakerja yang selama tiga tahun lamanya Persatuan Lawyer-Lawyer dalam Malaysia ini meneliti berbahas, berbincang dan menggubal Undang-Undang. Saya sebagai Peguam Negara ialah sebagai titular head — ketua sahaja tetapi tidak ada kuasa pada Bar Council. Maka dengan sebab itu, Menteri Undang-Undang tidak suka campur tangan berkenaan cara-cara Bar Council itu menjalankan prefessionnya.

Izinkan saya bercakap dalam Bahasa Inggeris.

(Dengan izin) Although I am the titular head of the Bar, I give all the freedom to the Bar Council of Malaysia to draft their own Bill to govern their profession and I only give them advice. Some of the Honourable Members of this House are members of the Bar Council and aware of what is going on and the Bill is before this House and

so may be debated in full at the next meeting. So, all these matters which have been brought up will really be fully debated in the coming meeting of Parliament, but the Bill before us now is a small amendment just to suit what is for the time being lacking in Sabah and I was urged many times by the Judge there and the lawyers there to bring this amendment to this House. As regards what Yang Berhormat from Kepong said just now — unfortunately he is not here — but I would say this. He is aware but pretends not to be aware of how Sabah and Sarawak joined Malaysia because there is an Agreement and there are certain restrictions from our people from here going there. We know Sabah and Sarawak, compared to Peninsular Malaysia, are not so advanced and we do not blame them for looking after the interests of their people there and, as such, there is in that Agreement that our people cannot go there to practise, for example, as a member of the Bar or as a lawyer without their permission and immigration is still in their hands; you cannot enter Sabah and Sarawak without their approval. For this reason his suggestion to have one registration for all the lawyers all over Malaysia will not bring Sabah and Sarawak nearer to us but will drive Sabah and Sarawak further away because they may say this is a step from those well developed Peninsular Malaysian people to pour there — like bees to gather honey from their States. So, I have been trying many times and we will do so when the time is right when they say they agree to open their doors and they agree that we should have one Bar for the whole of Malaysia, then we will do it. *The Bill which I am going to bring to this House for debate in December will only be applicable to West Malaysia but there is a special provision to extend it to Sarawak and Sabah on condition that the people of Sabah, the people of Sarawak and members of the Bar of Sabah and members of the Bar of Sarawak agree to that; then we will do it.* The Federal Government will not do anything to offend, to hurt or do whatever it is against the interests of Sabah and Sarawak. As regards the remarks made by the Honourable Member for Maran just now, when he said he did not agree to many things contained in here, to which I do not agree at all, he must have gone, Mr Speaker, through his post-graduate course and the six months Chambers course; he says it is not good and he is not satisfied. But if he has gone through these courses and he has not gone through any other course, then the Honourable Member is no good as a lawyer, if he is one. He should go for further course abroad. He wants to extend, for example, reading in the Chambers from six months to more. It is not the number of months, Mr Speaker — bukan berapa bulan — that matters you may put a man in the Chambers for three years but he may be a 'dud' lawyer still. It may be three months but if fully taught by experienced lawyers and if he were given every chance to go to the Court and he himself took the trouble, the three month course reading in the Chambers is better than three years. So, it is not the number of months one reads in the Chambers but the amount of work given to a newly qualified lawyer by the senior lawyers to do and the amount of teaching given to him and also how much the person concerned applies himself to reading in the Chambers that matters and not the number of months one spends reading in the Chambers.

That is all. Itulah, Tuan Yang di-Pertua, yang dapat saya jawab. (Emphasis added.)

[51] With the passing of the Bill, LPA was introduced. Sections 1 and 2 of the LPA read as follows:

Section 1 Short Title and commencement

(1) This Act may be cited as the Legal Profession Act 1976.

(2) The Minister may appoint different dates for the coming into operation of the different parts or provisions of this Act and different dates may be appointed for the coming into operation of this Act in Peninsular Malaysia, Sabah and Sarawak.

Section 2 Application

This Act shall apply throughout Malaysia but shall only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make; and such order shall be published in the Gazette.

[52] The applicability of this LPA can be seen in the case of *Datuk Hj Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii* [2009] 4 MLJ 165; [2009] 1 MLRA 602; [2009] 4 CLJ 449 where Zaki Azmi CJ (as he then was) stated as follows:

[46] However, it is sufficient to say that s 2 of the LPA also makes it clear the LPA shall only be made applicable to Sabah and Sarawak if there is a modification order by the Yang di-Pertuan Agong to that effect. There is no such order that has been made or published in the Gazette, thus s 35 of the LPA cannot apply to Sabah and Sarawak:

Section 2 Application

This Act shall apply throughout Malaysia but shall only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make; and such Order shall be published in the Gazette.

[53] Based on the above-mentioned authorities and based on the intention of the Parliament, it is my view that this LPA is not made applicable to Sabah and Sarawak. Hence, the petitioner cannot use his period of pupillage in Sarawak, under Sarawak Advocates Ordinance to be admitted as an advocate and solicitor under this LPA.

[54] The petitioner referred to the case of *Samantha Murthi* and *Sunil Singh* in order to proceed with his petition without applying any exemption from the Bar Council. However, in *Samantha Murthi*, the issue raised was on the word of Malaysia in s 13(1) of the LPA. The crux of the whole issue was whether Mr Reddy who practiced in Sarawak was an advocate and solicitor who was or had been in active practice in Malaysia within the meaning of s 13(1) of the LPA, such that he could have been a master pupil intending to be admitted to the Malayan Bar. The Federal Court allowed the appeal and held that the word Malaysia used in s 13(1) of the LPA must be construed to include any part of Malaysia. Mr Reddy has been in active practice in Sarawak which is part of Malaysia.

[55] It must be stressed that the issue in *Samantha Murthi* was on s 13(1) of the LPA, while in this present case, the objection is on the period of pupillage under s 12 of the LPA as well as s 13(3) of the LPA. The issue discussed in *Samantha Murthi* was the issue of whether Mr Reddy who practised in Sarawak was an advocate and solicitor who was or had been in active practice in Malaysia within the meaning of s 13(1) of the LPA.

[56] It did not discuss whether the period spent by *Samantha Murthi* in Mr Reddy's chambers should be counted. The Federal Court only allowed the appeal, and this petition was remitted to the High Court for further consideration. It is clear that *Samantha Murthi*'s admission as an advocate and solicitor of the High Court of Malaya is not automatic if solely based on the Federal Court's decision.

[57] Further, the fact that *Samantha Murthi* had started his pupillage for seven months at Mr Vijandran's chambers in Kuala Lumpur, should be distinguished from the fact of this current case. In this instant case, the petitioner did not start over his pupillage with any law firm in Peninsular Malaysia but had insisted on using the 12 months period of pupillage in Sarawak. There was also no evidence to show that he had started over his pupillage with any master who had a firm in Peninsular Malaysia.

[58] The case of *Sunil Singh* too, must be distinguished since the issue involved was also in regard to s 13(1) of the LPA and not under s 13(3) of the LPA. The issue involved the period of pupillage served with the master pupil in Labuan and whether the pupil master is an advocate and solicitor who is and has been in active practise in Malaysia. Since, Labuan is under Federal Territories, not under Sabah or Sarawak, the governing Act will be the LPA.

[59] Again, the facts in *Sunil Singh* concerned the validity of the pupil master, which have been correctly decided by the court. In fact, in *Sunil Singh*, after he had practiced in Singapore for approximately 19 months, he then started over his chambering with Mr George Pathmanathan in the Federal Territory of Labuan.

[60] Hence, this Court agrees with the Bar Council's objection, and it is vibrant that the exemption under s 13 of the LPA is not automatic. Subsection 3 clearly provides that an application shall be made for any exemption. Even in the case of *Sunil Singh*, he also applied for an exemption and was granted one and a half months shortening of his period of pupillage by considering his experience in Singapore.

[61] In fact, in both of these two cases, the petitioner had started over their pupillage with another master at another firm in Peninsular Malaysia and

Labuan, while in this current case, the petitioner seeks to use his 12 months period of pupillage in Sarawak with the same master.

[62] Despite being an advocate and solicitor of the High Court of Sabah and Sarawak, the petitioner's admission as an advocate and solicitor of the High Court of Malaya is not automatic, but subject to the exemption under s 13(3) of the LPA. Section 13(3) of the LPA gives the sole discretion to the Bar Council to exempt a qualified person from any period of up to six months' pupillage upon application made to it supported by satisfactory evidence. As there is no exemption given to the petitioner, he needs to fulfill the nine months period of pupillage as stated under ss 11(1)(d) and 12(2) of the LPA.

[63] Based on the case of *Edmonds* and the practical guide issued by the Malaysian Bar, it is apparent that the purpose of the pupillage is to train pupils with the experienced lawyer as to the required skills for a certain period of time, before they can be allowed to practice on their own.

[64] The petitioner's petition to be exempted from undergoing pupillage at all, is not in line with the purpose of pupillage. This is because the experience of being a pupil under the supervision of a master and at a firm in Peninsular Malaysia will be different as compared to undergoing it in Sarawak. It cannot be denied that there is a difference between the law in Peninsular Malaysia and Sarawak. After all, as the petitioner is petitioning to be admitted as an advocate and solicitor of the High Court of Malaya, he will be able to appreciate the practical side of the law more if he did his pupillage in Peninsular Malaysia.

CONCLUSION

[65] Having perused the cause papers and relevant authorities, it is this court's view that the petitioner cannot use his 12 months period of pupillage in Sarawak to be admitted as an advocate and solicitor of the High Court of Malaya.

[66] It must be stressed that ss 11(1)(d) and 12(2) of the LPA provide that a pupil must serve a prescribed period of pupillage of nine months to qualify for admission. Further, s 36(4) of the LPA stipulates that the period of pupillage shall commence on the date of the filing of the petition referred to in s 15(5) of the LPA. Hence, the petitioner's period of pupillage is to start from 3 August 2022 until 2 May 2023.

[67] The petitioner's contention that he had fulfilled ss 12 and 13 of the LPA for the purpose of being admitted as an advocate and solicitor of the High Court of Malaya, cannot be sustained as s 2 bars the applicability of this LPA to Sarawak.

[68] Therefore, his 12 months period of pupillage in Sarawak cannot be counted for the purpose of admission under this LPA.

[69] Hence, the preliminary objections by the Honourable AG, Bar Council and the KLBC must be allowed. Since this is a public interest case, I make no order as to costs.

Preliminary objections of the AG, the Bar Council and the KLBC to the petition allowed.

Reported by Ashok Kumar